



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 29 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Tom Baumgartner, Director Environmental Compliance
Brunswick Corporation
Mercury Marine Division
W6250 Pioneer Road
P.O. Box 1939
Fond du Lac, WI 54936

Dear Mr. Baumgartner:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Clean Air Act violations alleged against Brunswick Corporation, Mercury Marine Division at W6250 Pioneer Road in Fond du Lac, Wisconsin, CAA Docket No.

CAA-05-2005 0060 As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 29 2005.

Pursuant to paragraph 27 of the CAFO, Mercury Marine must pay the civil penalty on or before Your check must display the case docket number CAA-05-2005 0060 and the billing document number, 054305033.

Please direct any questions regarding this case to Deborah A. Carlson, Associate Regional Counsel, (312) 353-6121.

Sincerely yours,

Randall Robinson, Acting Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Bill Baumann, Chief, Compliance and Enforcement Section
Bureau of Air Management, Wisconsin DNR

Imelda Stamm, Supervisor - South Team, Northeast Region,
Bureau of Air Management, Wisconsin DNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Brunswick Corporation
Mercury Marine Division
Fond du Lac, Wisconsin

Respondent.

) Docket No. **CAA-05- 2005- 0060**

) **Proceeding to Assess a Civil**
) **Penalty under Section 113(d) of the**
) **Clean Air Act,**
) **42 U.S.C. § 7413(d)**

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Brunswick Corporation, Mercury Marine Division (Mercury Marine), a corporation doing business in Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Mercury Marine admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and violations in this CAFO.

8. Mercury Marine waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production facilities at 40 C.F.R. Part 63 Subpart RRR.

10. The NESHAP, at 40 C.F. R. § 63.1500, applies to the owner or operator of each secondary aluminum production facility as defined in Section 63.1503.

11. The NESHAP for Secondary Aluminum Production applies to Mercury Marine.

12. Pursuant to 40 C.F.R. § 63.1500(b), the requirements of Subpart RRR pertaining to dioxin and furan (D/F) emissions and the associated operating, monitoring, reporting and recordkeeping requirements apply to affected sources, located at each new and existing facility that is a major source of hazardous air pollutants as defined in 40 C.F.R. § 63.2, including among other things, thermal chip dryers.

13. U.S. EPA issued a Finding of Violation to Mercury Marine on September 29, 2004, citing specified violations of the secondary aluminum production NESHAP.

14. Effective May 23, 2005, U.S. EPA and Mercury Marine entered into an Administrative Consent Order, requiring Mercury Marine's compliance with the secondary aluminum production NESHAP.

15. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

16. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

18. Mercury Marine owns and operates a Secondary Aluminum Production facility at W6250 Pioneer Road in Fond du Lac, Wisconsin. Mercury Marine's Fond du Lac facility includes a thermal chip dryer and a shredder.

19. Mercury Marine's Fond du Lac facility is subject to the requirements at 40 C.F.R. Part 63, Subpart RRR. Mercury Marine is a major source for Hazardous Air Pollutants (HAP).

Violations

20. On May 24, 2003, Mercury Marine was required to submit a notification of compliance status. Mercury Marine failed to submit that notification in a timely fashion, in violation of 40 C.F.R. § 63.1515(b).

21. By March 24, 2003, Mercury Marine was required to perform initial performance tests on its affected emission sources. Mercury Marine did not conduct such tests in a timely fashion, in violation of 40 C.F.R. § 63.1511(b).

22. By March 24, 2003, Mercury Marine was required to prepare and implement an Operation, Maintenance, and Monitoring (OM&M) Plan. Mercury Marine did not prepare or implement an OM&M plan in a timely fashion, in violation of 40 C.F.R. § 63.1510(b).

23. By March 24, 2003, Mercury Marine was required to develop and implement an approved written Startup, Shutdown, and Malfunction (SSM) Plan. Mercury Marine did not develop or implement an SSM plan in a timely fashion, in violation of 40 C.F.R. § 63.1516(a).

24. By October 24, 2003, Mercury Marine was required to submit its first Excess Emission/Summary Report. Mercury Marine failed to submit its report in a timely fashion, in violation of 40 C.F.R. § 63.1516(b).

25. Mercury Marine failed to operate all new and existing affected sources and control equipment according to the operating requirements in Subpart RRR in violation of 40 C.F.R. § 63.1506(a)(1).

26. Mercury Marine failed to install, calibrate, operate, and maintain a device to measure and record the total weight of feed/charge to, or the aluminum production from, the affected source or emission unit, or to use an approved procedure to determine the total weight of

feed/charge to, or aluminum production from, the affected source or emission unit in violation of 40 C.F.R. § 63.1510(e).

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Mercury Marine's cooperation, and agreement to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$40,000.

28. Mercury Marine must pay the \$40,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

29. Mercury Marine must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

30. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Deborah Carlson,(C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

31. This civil penalty is not deductible for federal tax purposes.

32. If Mercury Marine does not pay timely the civil penalty, or any stipulated penalties due under paragraph 43, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Mercury Marine will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Mercury Marine will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Projects

34. Mercury Marine must complete three supplemental environmental projects (SEPs) as described below.

35. Mercury Marine must complete the following two SEPs designed to protect the

environment by eliminating or reducing gasoline vapor emissions.

a. Vapor Recovery System: Mercury Marine will install a stage 1 vapor recovery system for above ground storage tanks which store gasoline for indoor engine testing at four of its Wisconsin facilities: Plant #12 Fond du Lac, Plant #15 Fond du Lac, Mercury Racing Fond du Lac and Plant #33 Oshkosh. Mercury Marine will complete the installation of the stage 1 vapor recovery systems at the facilities listed above by January 1, 2006.

b. Vapor Saver: Mercury Marine will install a vapor saver on the above ground storage tank at Mercury Marine's Plant #12 in Fond du Lac by January 1, 2006.

c. Mercury Marine must spend at least \$27,500 for purchase and installation of the stage 1 vapor recovery systems and \$28,000 for purchase and installation of the vapor saver.

d. Mercury Marine must continuously use or operate the stage 1 vapor recovery systems and vapor saver for 10 years following their installation, unless Mercury Marine permanently takes out of service the gasoline storage tanks on to which the stage 1 vapor recovery system or vapor saver equipment is installed. If Mercury Marine takes such gasoline storage tanks out of service within 10 years of installing the stage 1 vapor recovery system or vapor saver equipment, Mercury Marine will notify U.S. EPA in writing at the address for the Compliance Tracker in paragraph 30, above.

e. Mercury Marine must submit SEP completion reports for the vapor recovery and vapor saver SEPs to U.S. EPA within 90 days of completion of the SEPs. These reports must contain the following information:

- i. detailed description of the SEP as completed;
- ii. description of any operating problems and the actions taken to correct the problems;

- iii. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual costs of the goods and services;
- iv. certification that Mercury Marine has completed the SEP in compliance with this CAFO; and
- v. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

36. **Diesel Retrofit SEP:** Mercury Marine must complete a SEP designed to protect the environment and the public health by reducing emissions from vehicles owned by Mercury Marine at its Fond du Lac facility, the City of Fond du Lac, the County of Fond du Lac, Wisconsin and/or other municipal vehicles in Fond du Lac County.

a. Mercury Marine will spend at least \$50,000 by May 1, 2006 and another \$57,750 within one year of the effective date of this CAFO (for a total of \$107,750), for the purchase and installation of EPA or California Air Resources Board (CARB) verified diesel oxidation catalysts (DOCs) that will be installed on vehicles owned by Mercury Marine, the City of Fond du Lac, the County of Fond du Lac and/or other municipal vehicles in Fond du Lac County. Such vehicles may not include school buses. The purchase and installation of the EPA or CARB verified DOCs must be completed within 1 year of the effective date of this CAFO.

b. **Reporting:** Mercury Marine must provide the following information to EPA by the 15th day of the month following each quarter (January, April, July and October) regarding the vehicles for which retrofits have been completed to date:

- i. Vehicle owner with contact name and phone number;
- ii. Vehicle types (i.e. garbage truck, street sweeper, etc.);
- iii. Model year;

- iv. Engine manufacturer;
- v. Engine size (Hp);
- vi. Actual, if readily available or estimated annual miles or hours of operation;
- vii. Retrofit cost per vehicle (separate out installation costs);
- viii. Actual, if readily available or estimated fuel usage (gallons/year); and
- ix. Copy of invoices for purchase of the control technologies.

c. Mercury Marine must submit a final diesel retrofit SEP completion report within 60 days of completing the diesel retrofit SEP. The final SEP completion report must contain all of the information listed in paragraph 36b, a certification that Mercury Marine has completed the SEP in compliance with this CAFO and a description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions if feasible).

37. Mercury Marine certifies that it is not required to perform or develop any of the SEPs in this CAFO by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Mercury Marine further certifies that it has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

38. U.S. EPA may inspect the facility at any time to monitor Mercury Marine's compliance with this CAFO's SEP requirements.

39. Mercury Marine must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

40. In each report that Mercury Marine submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP completion reports described in paragraphs 35 and 36 above, U.S. EPA may notify Mercury Marine in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Mercury Marine 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 43.

42. If U.S. EPA exercises option b. above, Mercury Marine may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Mercury Marine's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Mercury Marine a written decision on its objection. Mercury Marine will comply with any requirements that U.S. EPA imposes in its decision. If Mercury Marine does not complete the SEP(s) as required by U.S. EPA's decision, Mercury Marine will pay stipulated penalties to the United States under paragraph 43 below.

43. If Mercury Marine violates any requirement of this CAFO relating to the SEPs, Mercury Marine must pay stipulated penalties to the United States as follows:

a. **Vapor recovery/vapor saver:** If Respondent spent less on the SEP than the amount set forth in paragraph 35, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 35 or add the amount saved to the amount to be spent on the diesel retrofit SEP. In any case, Mercury Marine must spend a minimum of \$163,250 on all three SEPs.

b. **Diesel retrofits:** If Respondent spent less on the SEP than the amount set forth in paragraph 36, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 36.

c. **Vapor recovery/vapor saver:** If Respondent has completed the SEP but the SEP is not functioning as intended, Respondent must pay \$5,000 in addition to any penalty required under subparagraph 43a, above.

d. **Diesel retrofits:** If Respondent has completed the SEP but the SEP is not functioning as intended, Respondent must pay \$10,000 in addition to any penalty required under subparagraph 43b, above.

e. **Vapor recovery/vapor saver:** If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$10,000 in addition to any penalty required under subparagraph 43a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier. The \$10,000 stipulated penalty assessed in this paragraph will not apply if Mercury Marine demonstrates and EPA agrees, that it is not possible to complete the SEP.

f. **Diesel retrofits:** If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$15,000 in addition to any penalty required under subparagraph 43b, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier. The stipulated penalty assessed pursuant to this paragraph does not apply where Mercury Marine is unable to find enough vehicles to retrofit. In that case, paragraph 43b would apply and Mercury Marine would pay the balance of the penalty in cash.

g. **Vapor recovery/vapor saver and diesel retrofit SEPs:** If Respondent fails to comply with the schedule in paragraphs 35 and 36, above, for implementing the SEPs, fails to submit timely the SEP quarterly and final completion reports required by paragraphs 35 and 36, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$ 250	1 st through 14 th day
\$ 500	15 th through 30 th day
\$ 1,000	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

44. U.S. EPA's determinations of whether Mercury Marine satisfactorily completed the SEPs and whether it made good faith, timely efforts to complete the SEPs will bind Mercury Marine.

45. Mercury Marine must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Mercury Marine will use the method of payment specified in paragraphs 28-30 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

46. Any public statement that Mercury Marine makes referring to any of the SEPs must include the following language, "Mercury Marine undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Brunswick Corporation, Mercury Marine Division for violations of the Secondary Aluminum Processing National Emissions Standards for Hazardous Air Pollutants."

Final Statement

47. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

48. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

49. This CAFO does not affect Mercury Marine's responsibility to comply with the Act

and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 47 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

50. Mercury Marine certifies that it is complying fully with the Secondary Aluminum Production NESHAP.

51. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Mercury Marine's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

52. The terms of this CAFO bind Mercury Marine, and its successors, and assigns.

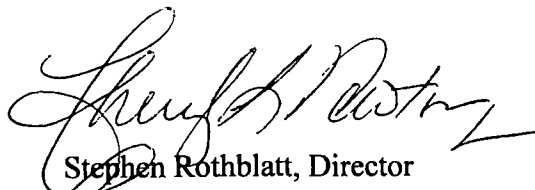
53. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

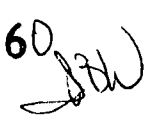
54. Each party agrees to bear its own costs and attorneys' fees in this action.

55. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

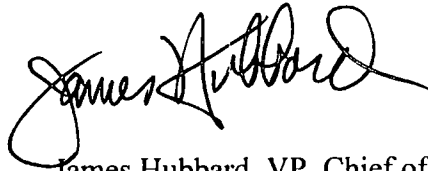
9/28/05
Date


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)


CAA-05- 2005- 0060 

Brunswick Corporation
Mercury Marine Division, Respondent

Sep 23, 2005
Date



James Hubbard, VP, Chief of Staff
Mercury Marine, Division
Brunswick Corporation

CAA-05- 2005 0060 

CONSENT AGREEMENT AND FINAL ORDER

**Brunswick Corporation,
Mercury Marine Division**

Docket No. CAA-05- 2005 0061
Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-29-05
Date

Thomas V. Skinner
Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

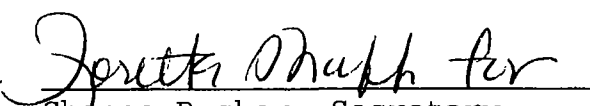
I, Shanée Rucker, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number **CAA-05-2005 0060** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested to Mercury Marine, by placing them in the custody of the United States Postal Service addressed as follows:

Tom Baumgartner, Director Environmental Compliance
Brunswick Corporation
Mercury Marine Division
W6250 Pioneer Road
P.O. Box 1939
Fond du Lac, WI 54936

Bill Baumann, Chief, Compliance and Enforcement Section
Bureau of Air Management
101 S. Webster St., P.O. Box 7921 (AM/7)
Madison, WI 53703

Imelda Stamm
Northeast Region - Oshkosh Service Center
625 E. County Road Y - Suite 700
Peshtigo, WI 54157

on the 29th day of September, 2005.


Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 9025 6541